STATE OF MINNESOTA

SPECIAL REDISTRICTING PANEL

A11-152

Sara Hippert, Dave Greer, Linda Markowitz, Dee Dee Larson, Ben Maas, Gregg Peppin, Randy Penrod and Charles Roulet, individually and on behalf of all citizens and voting residents of Minnesota similarly situated,

Plaintiffs,

and

Kenneth Martin, Lynn Wilson, Timothy O'Brien, Irene Peralez, Josie Johnson, Jane Krentz, Mark Altenburg, and Debra Hasskamp, individually and on behalf of all citizens of Minnesota similarly situated,

Plaintiffs–intervenors,

and

Audrey Britton, David Bly, Cary Coop, and John McIntosh, individually and on behalf of all citizens of Minnesota similarly situated,

Plaintiffs–intervenors,

vs.

Mark Ritchie, Secretary of State of Minnesota; and Robert Hiivala, Wright County Auditor, individually and on behalf of all Minnesota county chief election officers,

Defendants.

ORDER AWARDING
ATTORNEY FEES AND COSTS

ORDER

The Special Redistricting Panel (the panel) was appointed by Minnesota Supreme Court Chief Justice Lorie S. Gildea to address the constitutionality of existing congressional and legislative districts in the event that the Legislature and the Governor failed to enact a redistricting plan. In final orders filed on February 21, 2012, we declared the existing districts to be unconstitutional and adopted redistricting plans that reflect elements of proposals submitted by the parties, public testimony and comments, and the legislative record. Plaintiffs Sara Hippert et al. (the Hippert plaintiffs), plaintiffs–intervenors Kenneth Martin et al., and plaintiffs–intervenors Audrey Britton et al. subsequently filed motions for attorney fees and costs. Responses to those motions were filed by Secretary of State Mark Ritchie and Wright County Auditor Robert Hiivala. We now address those submissions.

I. *Under federal law, prevailing parties are entitled to attorney fees*

The complaint brought by the Hippert plaintiffs and the complaints in intervention brought by plaintiffs–intervenors Martin et al. and plaintiffs–intervenors Britton et al., under Section 1983 of the Civil Rights Act, 42 U.S.C. § 1983 (2006), alleged that the existing congressional and legislative districts were unconstitutional. Prevailing parties in an action brought under Section 1983 may recover attorney fees and costs under 42 U.S.C. § 1988(b) (2006). The purpose of Section 1988 is "to ensure effective access to the judicial process for" those whose civil rights have been violated, and prevailing parties "should ordinarily recover an attorney's fee unless special circumstances would

render such an award unjust."[1] The statutory provision for an award of attorney fees "was primarily enacted to encourage civil private attorney general actions as enforcement aids to the Civil Rights Act."[2] The statute is liberally construed to achieve this congressional purpose.[3] In accordance with this statute, attorney fees and costs have been awarded in past redistricting cycles to those characterized as prevailing parties.[4]

Secretary Ritchie and Auditor Hiivala do not dispute that Section 1988 applies to judicial redistricting proceedings. Rather, they argue that the applicants for fees and costs are not "prevailing parties" because Secretary Ritchie and Auditor Hiivala did not dispute the need for redistricting and the plans proposed by the parties were not adopted in their entirety.

To qualify as a prevailing party under Section 1988, a party must succeed on a significant claim and obtain some of the relief sought.[5] When the political process is deadlocked on redistricting and Section 1983 litigation results in the correction of population disparities among congressional and legislative districts, the parties who bring that litigation are vindicating the constitutional rights of all voters in Minnesota, and it is appropriate to award the prevailing parties attorney fees. Similarly, Minnesota law

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[1] *Hensley v. Eckerhart*, 461 U.S. 424, 429, 103 S. Ct. 1933, 1937 (1983) (quotations omitted).
[2] *Welsh v. City of Orono*, 355 N.W.2d 117, 124 (Minn. 1984).
[3] *Shepard v. City of St. Paul*, 380 N.W.2d 140, 142 (Minn. App. 1985).
[4] *Zachman v. Kiffmeyer*, No. C0-01-160 (Minn. Special Redistricting Panel Oct. 16, 2002) (order awarding attorney fees and costs); *Cotlow v. Growe*, No. C8-91-985, at 3, 6 (Minn. Special Redistricting Panel May 17, 1993) (order on costs, including attorney's fees and disbursements); *LaComb v. Growe,* Nos. 4-81 Civ. 152, 4-81 Civ. 414, at 7 (D. Minn. Aug. 16, 1982) (order awarding fees and costs); *Beens v. Erdahl*, No. 4-71 Civ. 151 (D. Minn. Feb. 9, 1973) (order awarding fees and costs pursuant to stipulation of parties).

provides that plaintiffs and plaintiffs–intervenors who obtain a declaration that existing congressional and legislative districts are unconstitutional and an injunction against their continued use, and who make significant contributions to the deliberations and decisions of a redistricting panel, are "prevailing parties within the meaning of 42 U.S.C. § 1988(b) and are entitled to reasonable attorney fees."[6] Minnesota's Special Redistricting Panels in the past have rejected arguments similar to those made by Secretary Ritchie and Auditor Hiivala, finding the cases on which they rely unpersuasive. Because the decisions of past Special Redistricting Panels are both instructive and persuasive, we conclude that the applicants for fees and costs are prevailing parties.

Secretary Ritchie and Auditor Hiivala argue that taxpayers should not bear the expense of redistricting. But the state has a constitutional and statutory obligation to accomplish congressional and legislative redistricting.[7] The Legislature and the Governor did not fulfill that responsibility after the 2010 census; and it is undisputed that the district boundaries established in the *Zachman* order no longer could define congressional or legislative districts consistent with the United States Constitution and the Minnesota Constitution. As a result of the commencement of this action by the

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[5] *Tex. State Teachers Ass'n v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 791, 109 S. Ct. 1486, 1493 (1989).

[6] *Zachman v. Kiffmeyer*, No. C0-01-160, at 4 (Minn. Special Redistricting Panel Oct. 16, 2002) (order awarding attorney fees).

[7] Minn. Const. art. IV, § 3 ("At its first session after each enumeration of the inhabitants of this state made by the authority of the United States, the legislature shall have the power to prescribe the bounds of congressional and legislative districts."); Minn. Stat. § 204B.14, subd. 1a ("It is the intention of the legislature to complete congressional and legislative redistricting activities . . . in no case later than 25 weeks before the state primary election in the year ending in two.").

Hippert plaintiffs and the intervention in this action by the two sets of plaintiffs–intervenors, the duty of ensuring the rights of the voters to constitutionally permissible congressional and legislative districts became that of the state judicial branch.[8] Whatever the means by which redistricting is accomplished, the state and its taxpayers ultimately bear the burden.

Here, redistricting was accomplished as a result of litigation brought under Section 1983 in state court. The applicants for attorney fees either brought suit or intervened in the action; and the legislative and congressional redistricting plans issued on February 21, 2012 were the result of that litigation. Parties who obtain relief under Section 1983 "on any significant issue in litigation" that has the effect of materially altering "the legal relationship between the parties" are entitled to attorney fees.[9] Secretary Ritchie and Auditor Hiivala have cited no authority to the contrary, and our research indicates that none exists. We also observe that one of the cases on which Secretary Ritchie relies specifically rejected an argument that the Arizona Secretary of State should not be liable for attorney fees, "because she [was] only a nominal defendant."[10] When redistricting is accomplished as a result of an action brought under Section 1983, an award of attorney fees against named government defendants in their official capacities does not require a

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[8] *See Growe v. Emison*, 507 U.S. 25, 34, 113 S. Ct. 1075, 1081 (1993) (holding that judicial supervision of redistricting is appropriate if other branches of government fail to enact a constitutionally acceptable plan).

[9] *Farrar v. Hobby*, 506 U.S. 103, 109, 111-12, 113 S. Ct. 566, 572, 573 (1992) (quotation omitted).

[10] *See Navajo Nation v. Ariz. Indep. Redistricting Comm'n*, 286 F. Supp. 2d 1087, 1096 (D. Ariz. 2003).

showing of bad faith.[11] That Secretary Ritchie and Auditor Hiivala acted in good faith is neither questioned by this panel nor a valid basis for denying fees to the prevailing parties.

II. *Defendants against whom relief was obtained are liable*

Auditor Hiivala argues that attorney fees and costs should be assessed "only" against the Secretary of State, but he cites no legal authority for this argument. We agree with Auditor Hiivala that redistricting benefits all citizens in the state, and it would be inequitable to impose the financial burden on the citizens of a single county. But the plaintiffs and plaintiffs–intervenors do not seek that result.

The named defendants in an action brought under Section 1983 are, as a general rule, jointly and severally liable for attorney fees. Allocation or apportionment between responsible parties is usually limited to situations in which the claims against them are separate and distinct or the parties are not equally culpable.[12] Auditor Hiivala failed to identify or address any criteria that might support the apportionment of fees in this case.

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[11] *Id.*

[12] *See Kentucky v. Graham*, 473 U.S. 159, 162, 170, 105 S. Ct. 3099, 3103, 3107 (1985) (holding that Commonwealth of Kentucky, having been dismissed from Section 1983 action, had not been prevailed against and was not liable for fees); *Koster v. Perales*, 903 F.2d 131, 139 (2d Cir. 1990) (affirming district court's refusal to apportion fees between county and state), *abrogated on other grounds*, *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res.*, 532 U.S. 598, 121 S. Ct. 1835 (2001); *Grendel's Den, Inc. v. Larkin*, 749 F.2d 945, 959-60 (1st Cir. 1984) (recognizing general rule that local governmental entities are liable for fees when enforcing state statutes, characterizing law on apportionment of fees as unsettled, and summarizing various theories for apportioning fees); *Crosby v. Bowling*, 683 F.2d 1068, 1074 (7th Cir. 1982) (rejecting argument that state defendants should not be liable for fees after state and federal regulations were declared invalid because state defendants were named as parties, they took an active role in litigating the case, and relief was granted against them).

If a governmental entity is dismissed from an action, based on a determination that the relief sought could not be obtained from that entity, the prevailing parties are not entitled to attorney fees from that entity.[13] But Auditor Hiivala never sought dismissal of the action, never argued that he was not a necessary party, and never disputed that relief could be obtained against him as a county election official. He denied "each and every allegation" in the complaints filed by the moving parties and participated throughout the proceedings. He also has not addressed the fact that previous Special Redistricting Panels have ordered attorney fees and costs "to be paid by defendants," without distinguishing between the named state and county officials.[14] In addition, although Auditor Hiivala appeared both individually and on behalf of all county election officers, he has not established any basis for us to award fees solely against the state. Of course, because of joint and several liability, if the state pays the entire fee award, no financial liability will fall on Wright County.

III. *Reasonable fees and costs*

We turn now to a determination of reasonable fees and costs, beginning with observations relevant to all of the applications and then addressing each application in turn. The moving parties seek fees and costs ranging from $180,763.98 to $292,130.85. Secretary Ritchie argues that the amounts sought are excessive, some of the documentation is inadequate, some of the claimed time was not spent on litigation before

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[13] *Graham*, 473 U.S. at 165, 105 S. Ct. at 3104 (indicating that liability on the merits and liability for fees are linked, so that dismissed governmental entity is not liable for fees); *Hines v. Marion Cnty. Election Bd.*, 166 F.R.D. 402, 408 (S.D. Ind. 1995) (same).

[14] *E.g.*, *Zachman v. Kiffmeyer*, No. C0-01-160, at 5 (Minn. Special Redistricting Panel Oct. 16, 2002) (order awarding attorney fees).

this panel, and some of the claimed costs should be denied. Auditor Hiivala adopts the arguments advanced by Secretary Ritchie.

A. *Attorney fees*

Prevailing parties in litigation brought under Section 1983 are entitled to fees that are "adequate to attract competent counsel without producing a *windfall* to attorneys."[15] "The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate," which yields "an initial estimate" that often is called the "lodestar" figure.[16] From the lodestar figure, the court should deduct hours that were not reasonably expended, whether because the case is overstaffed or because the hours sought are excessive, applying the same "billing judgment" that is ethically required when an attorney bills a client.[17] If "the lodestar amount is either unreasonably low or unreasonably high, the court may use a multiplier to adjust the lodestar amount upward or downward."[18] The degree of success obtained also is relevant when determining the amount of a fee award.[19] Finally, if the documentation submitted by the moving parties is inadequate, a court may reduce the fee award accordingly.[20]

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[15] *Shepard*, 380 N.W.2d at 143 (emphasis added).
[16] *Hensley*, 461 U.S. at 433, 103 S. Ct. at 1939; *see also Shepard*, 380 N.W.2d at 143.
[17] *Hensley*, 461 U.S. at 434, 103 S. Ct. at 1939-40 (quotation omitted); *see also Shepard*, 380 N.W.2d at 143.
[18] *Milner v. Farmers Ins. Exch.*, 748 N.W.2d 608, 624 (Minn. 2008) (quotation omitted).
[19] *Id.* at 623.
[20] *Hensley*, 461 U.S. at 433, 103 S. Ct. at 1939; *Shepard*, 380 N.W.2d at 143.

Because the "starting point" is to quantify the attorney fees that were "reasonably expended on the litigation,"[21] the overall nature of the specific litigation necessarily provides the context for evaluating any fee request. A number of the attorneys involved in the proceedings before the panel have previous experience with the process of judicial redistricting in Minnesota. They are aware that the primary features of the process involve the appointment of a special redistricting panel, establishment of criteria and principles that will govern redistricting, identification of unresolved issues to be litigated, obtaining and synthesizing input from the parties and interested citizens, and developing and evaluating maps and proposed redistricting plans. This round of redistricting proceeded in an orderly fashion, with minimal deviation from the process established by previous special redistricting panels. The scope of work required was clearly defined by the panel's scheduling orders.[22] While each group of parties may have approached the process somewhat differently, this was not uncharted territory and the attorneys were not confronting novel legal issues. Accordingly, we are mindful of the overall nature of this litigation as we examine the parties' applications for attorney fees and the supporting documentation.

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[21] *Hensley*, 461 U.S. at 433, 103 S. Ct. at 1939.

[22] *Hippert v. Ritchie*, No. A11-152 (Minn. Special Redistricting Panel July 18, 2011 & Oct. 6, 2011) (scheduling orders).

"A request for attorney's fees should not result in a second major litigation."[23] We have, however, carefully reviewed all of the documentation submitted by the parties and conclude that substantial adjustments to the requested amounts are required.

All of the attorney-fee requests seek compensation for time spent on parallel proceedings before the federal court. It is unclear how we could evaluate the reasonableness of time spent before a different tribunal on arguments and submissions that were not before this panel.[24] In addition, the plaintiffs–intervenors did not obtain in federal court the relief sought in this action—namely, a declaration that the then-existing districts are unconstitutional and redistricting plans for use in future elections. Therefore, for the purposes of this analysis, the claims they presented to the federal court can fairly be characterized as unsuccessful.[25] For the same reason, we conclude that time spent in federal court litigating which tribunal—state or federal—should proceed with redistricting and whether the judicial redistricting process should begin before it was clear that the Legislature and the Governor were unlikely to accomplish the necessary

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[23] *Hensley*, 461 U.S. at 437, 103 S. Ct. at 1941; *see also Copeland v. Marshall*, 641 F.2d 880, 903 (D.C. Cir. 1980) (indicating that court determining reasonable fees need not review each document in a file or evaluate "whether a particular motion could have been done in 9.6 hours instead of 14.3 hours"); *Lindy Bros. Builders, Inc. v. Am. Radiator & Standard Sanitary Corp.*, 540 F.2d 102, 116 (3rd Cir. 1976) (setting reasonable attorney fees does not require that court "become enmeshed in a meticulous analysis of every detailed facet of the professional representation" or that fee inquiry "assume massive proportions").

[24] *See Hughes v. Sinclair Mktg., Inc.*, 389 N.W.2d 194, 200 (Minn. 1986) (indicating that "better practice" is for court presiding over relevant portion of suit to determine appropriate attorney fees for that portion of proceedings).

[25] *See Shepard*, 380 N.W.2d at 143 (requiring that time spent on unsuccessful claims be excluded).

redistricting also should be deducted. Indeed, costs and fees for such disputes have been deducted by previous redistricting panels.[26]

Some of the fee requests include time spent on legislative redistricting proceedings, including legislative committee hearings. However, our focus must remain on the time reasonably expended on *this* litigation.[27] Because the legislative activities are not directly related to the proceedings before us and because some of the applications seek reimbursement for time spent on legislative activities even before the applicants became parties to this action, we conclude that those fees were not reasonably incurred in this proceeding. We, therefore, decline to include them in the lodestar figure. We also decline to assess fees against the defendants for time spent on media contacts that do not appear to have been "necessary to a sound legal defense" of this action.[28]

The supporting documentation submitted with the fee applications indicates that a significant amount of time was spent on e-mails, "strategy" meetings, telephone calls, meetings with co-counsel, and other activities related to coordination and administration of the litigation. It may well be appropriate to enlist "a number of different lawyers" to work on specific projects as "a strategic choice . . . in various phases of complex litigation."[29] We are mindful that the involvement of multiple attorneys will "inevitably result[] in a need for some amount of coordination."[30] Ultimately, "[e]verything turns on

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[26] *See, e.g.*, *Cotlow v. Growe*, No. C8-91-985, at 5 (Minn. Special Redistricting Panel May 17, 1993) (declining to award fees for federal litigation beyond time spent to preserve jurisdiction of state courts).
[27] *See Hensley*, 461 U.S. at 433-34, 103 S. Ct. at 1939-40.
[28] *See In re Kujawa*, 270 F.3d 578, 582 (8th Cir. 2001).
[29] *Hutchinson v. Patrick*, 636 F.3d 1, 14 (1st Cir. 2011).
[30] *Id.*

the reasonableness of the staffing patterns employed and the overall time spent."[31] All of the applications indicate that a combination of partners, associates, and paralegals worked on various phases of this litigation. We decline to second-guess the decisions made by the parties regarding the size of their litigation teams, but our responsibility is to evaluate each request for fees for reasonableness under the relevant legal authorities. For this reason, and also because the documentation establishes that a significant amount of time was spent on the coordination and administration of litigation teams even before the plaintiffs–intervenors became parties to the redistricting proceedings before this panel, we conclude that a significant amount of this time should be deducted when calculating the lodestar figure.

Two of the applications indicate that two law firms jointly represented a group of clients. One of the applications seeks fees for time incurred by both local counsel and by the Washington, D.C., law firm of "lead" counsel. Some of this time was billed at rates as high as $650 per hour, and two of the applications seek attorney fees of more than $500 per hour. All of the applicants submitted affidavits indicating that they are seeking compensation based on their customary billing rates. However, courts are not required to automatically accept a lawyer's customary rates, because courts are required "to supervise the conduct of the bar and do justice to the losing as well as the winning side."[32] In light of the documentation as a whole, we are not convinced that these rates

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[31] *Id.*

[32] *Avalon Cinema Corp. v. Thompson*, 689 F.2d 137, 140 (8th Cir. 1982).

accurately reflect the market rate for attorney fees in this jurisdiction or the reality of negotiated legal-fee payment arrangements in today's marketplace.

When calculating fee awards under Section 1988, Minnesota courts must consider the "prevailing market rate" in the community where the case is tried.[33] Sometimes, it is impossible "to find counsel in or near the locality of the case who are able and willing to undertake difficult and controversial civil-rights litigation. If a plaintiff can show he [or she] has been unable through diligent, good faith efforts to retain local counsel, attorney's fees under 42 U.S.C. § 1988 are not limited to the prevailing rate" in the community or location where the case was tried.[34]

Even when an out-of-town attorney is "accurately described as a 'specialist' with a national practice . . . and particular experience" in the subject area, the availability of competent local counsel at a lower hourly rate is a consideration for the court.[35] Here, experienced local counsel provided competent representation. We, therefore, conclude that prevailing market rates in the Twin Cities are the appropriate frame of reference for our analysis.

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[33] *Reome v. Gottlieb*, 361 N.W.2d 75, 77-78 (Minn. App. 1985), *review denied* (Minn. July 11, 1985).

[34] *Avalon Cinema*, 689 F.2d at 140-41 (quotation omitted); *see also Emery v. Hunt*, 272 F.3d 1042, 1048 (8th Cir. 2001) (recognizing that plaintiff must establish inability to find local counsel willing and able to take case, as prerequisite for recovering higher out-of-town rates).

[35] *Avalon Cinema*, 689 F.2d at 141; *see also Loesel v. City of Frankenmuth*, 743 F. Supp. 2d 619, 644-45 (E.D. Mich. 2010) (acknowledging that prevailing market rate in community where action is tried is usual frame of reference, so compensation at higher rates requires showing that local attorneys were unwilling to take case or lacked required expertise).

B. *Costs*

A prevailing party entitled to recover attorney fees under Section 1988 also is entitled to seek reasonable out-of-pocket expenses incurred in connection with the litigation, even if the expenses would not be taxable in a case that is not governed by Section 1988.[36] In an action brought under Section 1983, courts may deny claimed costs for "general copying, computerized legal research, postage," and expenses which are related to making appearances before the court, such as the cost of parking at the courthouse.[37] The expenses that are recoverable may depend on the statute at issue.[38]

Some of the applications submitted seek costs that are clearly related to the federal proceedings, including filing fees, service, and copies. The applicants have not established that expenses incurred before another tribunal are recoverable in this proceeding. The applications also include multiple requests for "copying" and "photocopies" that are not otherwise explained. In large part, no information was provided about what was being copied, why these amounts would not constitute routine office overhead factored into an attorney's hourly rate, or how these copies related to the proceedings before this panel. Some of the claimed costs were incurred before plaintiffs–intervenors were parties to these proceedings. In short, many of the costs are not

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[36] *Harris v. Marhoefer*, 24 F.3d 16, 19-20 (9th Cir. 1994).
[37] *Duckworth v. Whisenant*, 97 F.3d 1393, 1399 (11th Cir. 1996).
[38] *See, e.g.*, *Aston v. Sec'y of Health & Human Servs.*, 808 F.2d 9, 12 (2d Cir. 1986) (allowing "telephone, postage, travel and photocopying costs" under Equal Access to Justice Act and noting other authority denying "costs of travel, filing, wrapping and postage" under same).

adequately documented so as to establish that they reasonably were incurred in connection with the proceedings before this panel.

Courts differ as to whether prevailing parties may recover for the expenses of electronic legal research. The law of the Eighth Circuit "is that computer-based legal research must be factored into the attorneys' hourly rate" and "may not be added to the fee award," although time spent on research "is compensable as part of . . . billable hours."[39] Other circuits have sometimes allowed travel expenses, "computer time," printing, and photocopying, rejecting arguments that these amounts must always be denied under fee-shifting statutes as "unrecoverable overhead" and rejecting arguments that these amounts would not be taxable as ordinary costs, in the absence of a statute.[40] We conclude that the Eighth Circuit limitation on adding electronic legal research to legal fee awards is reasonable and appropriate in the present context. Attorneys who are being compensated at hourly rates well into the three-figure-per-hour range cannot *reasonably* charge such rates *plus* charge as a cost the expense of electronic legal research. At the rates charged, and to an extent allowed as reasonable herein, the cost of electronic legal research is properly considered part of the attorneys' rates.

IV. *Applications by the parties*

Having addressed the matters that generally apply to more than one of the applications, we now analyze the individual applications.

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[39] *Standley v. Chilhowee R-IV Sch. Dist.*, 5 F.3d 319, 325 & n.7 (8th Cir. 1993).
[40] *See, e.g.*, *Hutchinson*, 636 F.3d at 17.

A. *Application by the Hippert plaintiffs et al.*

The Hippert plaintiffs seek $225,000 for attorney fees and nearly $21,000 for costs. Their supporting documentation indicates that attorney fees of $413,329.75 were billed by one local law firm, at hourly rates of $195 to $620, for more than 1,006 hours of work. The Hippert application does not seek attorney fees for a second local firm that worked on the case, and no documentation was submitted for any hours worked or tasks performed by that firm. But the Hippert plaintiffs seek costs incurred by the second local firm. Because of a significant disparity between the supporting documentation provided and the amount requested, it is virtually impossible for us to determine "the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate," even though the lodestar is the required "starting point for determining a reasonable attorney's fee."[41]

The Hippert application adopts a calculation method that previously has not been adopted by any court decision that our research has located or that their application cites. The Hippert plaintiffs suggest that this panel should look at the "average fee request[s]" of parties to the last round of redistricting litigation, then accept that "hourly billing rates for attorneys at large firms in Minneapolis and St. Paul" have increased an average of 81 percent in the past decade (based on a study that was not provided to the panel), and then recognize that "an equivalent amount in today's legal community" would be $233,345. Based on this methodology, the Hippert plaintiffs argue that attorney fees of $225,000 are clearly reasonable.

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[41] *Reome*, 361 N.W.2d at 77; *see also Hensley*, 461 U.S. at 433, 103 S. Ct. at 1939.

The rationale for using as our starting point the amount requested but not awarded during previous redistricting proceedings is unclear. Likewise, there is nothing in the record before us that establishes any basis for concluding that it would be "reasonable" for attorneys to expect 81 percent more compensation for redistricting litigation in 2012 than they received in 2002. In fact, given the current economic climate, that expectation seems decidedly unreasonable. Finally, plaintiffs' supporting documentation is heavily redacted, with numerous entries for "telephone conference with [redacted] regarding [redacted]," "office work regarding [redacted]," "emails to/from [redacted]," and "review [redacted]." The lack of detail in submissions to the panel provides additional support for granting an attorney-fee award that is lower than the amount requested.[42]

We are unable to determine whether certain time that is not compensable as part of this proceeding has already been deducted because of the disparity between the supporting documentation and the amount sought. For example, there are entries for submissions to the federal court in connection to the parallel proceedings and for addressing media requests. In addition, there are entries that appear to combine compensable time with activities that are not closely related to the proceedings before this panel. There also are dates on which multiple attorneys billed for the same activities, including attendance at hearings. While it may have been reasonable as a tactical matter between attorney and client for multiple attorneys to attend hearings before the panel, it is not reasonable to expect the defendants (and thus the taxpayers of Minnesota) to pay over $1,000 per hour for that attendance.

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[42] *See Hensley*, 461 U.S. at 433, 103 S. Ct. at 1939; *Shepard*, 380 N.W.2d at 143.

The Hippert application does not include billing records for the second law firm. Therefore, it is difficult to link the costs sought on behalf of that firm to specific submissions or appearances before this panel. Nearly $4,700 is sought for photocopies, without any additional information that would aid us in evaluating the reasonableness of this claimed amount. More than $500 is sought for "Mileage/Parking," but it is unclear whether these expenses relate to appearances before the panel, conferences with co-counsel, attendance at public hearings, or activities that are not directly related to the proceedings before this tribunal. Charges for courier services and "binders" are similarly unexplained.

The lead firm representing the Hippert plaintiffs seeks more than $15,000 in costs, including charges for electronic legal research, unexplained "delivery services," "copies" that do not appear to be directly related to submissions to the panel, and $157.63 that is sought for "services" that are not otherwise described or documented. The Hippert application also seeks more than $3,100 for "digital reproduction" and almost $8,700 for in-house "color printing." The supporting documentation does not clearly identify amounts that might have been paid to an outside vendor to prepare copies for service on the other parties and filing with the panel, as distinguished from copying for internal use, meetings, and dissemination to a large litigation team. Although the documentation is incomplete, it appears that some of the amounts incurred for color copies and digital reproduction are reasonably related to submissions to the panel, and amounts paid for transcripts also are allowable.

B. *Application by plaintiffs–intervenors Martin et al.*

Plaintiffs–intervenors Martin et al. seek $292,131, including more than $153,000 for attorney fees incurred by out-of-town counsel, approximately $126,500 incurred by local counsel, and costs exceeding $12,500. Half of the attorneys billed at rates between $495 and $650 per hour. The supporting documentation indicates that the litigation team spent 728 hours on the case, but the application applies a "discount" of ten percent. The effect of that discount is to reduce either the total time for which compensation is claimed or the effective hourly rates.

As previously addressed, there has been no showing that significantly higher rates than those prevailing in the Twin Cities should be allowed or that competent local counsel was unavailable. The absence of this showing weighs against the allowance of higher hourly rates, and it also weighs against the allowance of substantial travel expenses.[43] We also observe that a significant amount of the claimed time predates the intervention of these parties in the state redistricting proceedings and includes non-litigation activities, such as drafting press releases and talking points and attending legislative committee meetings.

The Martin application includes minimal explanation for claimed photocopies and printing charges and no explanation for "air express" and "staff overtime" charges. The

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[43] *See Ramos v. Lamm*, 713 F.2d 546, 559 (10th Cir. 1983) (declining to allow travel expenses for counsel between Washington, D.C., and Denver, where case was venued), *overruled on other grounds Pennsylvania v. Del. Valley Citizens' Council for Clear Air*, 483 U.S. 711, 717 & n.4, 727, 107 S. Ct. 3078, 3082 & n.4, 3088 (1987) (listing cases that had previously approved of upward adjustment to attorney fees "to compensate for the risk of not prevailing," including *Ramos*, and holding compensation for this risk "impermissible under the usual fee-shifting statutes").

request includes expenses that are clearly attributable to the federal proceedings, and there are numerous entries for courier delivery of pleadings, although the panel did not require that submissions be personally served. Finally, the claimed costs include about $1,300 for electronic legal research. It appears, however, that payments to an outside vendor for submissions to the panel, transcript expenses, and some other costs are reasonably related to the proceedings before the panel.

C. *Application by plaintiffs–intervenors Britton, et al.*

Plaintiffs–intervenors Britton et al. seek attorney fees of nearly $174,000 for 785.75 hours of work, and approximately $6,800 for costs, for a total request of $180,763.98. No one has challenged the hourly rates requested, and the documentation contains sufficient descriptions of the work performed.

The Britton application also seeks an upward adjustment from the documented attorney fees. An upward adjustment "is warranted only in rare cases of exceptional success" and must be supported by specific evidence in the record and detailed findings by the court.[44] The lodestar determination of reasonable fees should accurately reflect "the results obtained, the complexity of the litigation, and the duration of the litigation," so that those factors do not support the use of a multiplier or adjustment.[45] The factors identified in the Britton application, in support of the request for an upward adjustment, have already been considered in setting the lodestar figure. Previous Special

[44] *Milner*, 748 N.W.2d at 624.
[45] *Id.*; *see also Hensley*, 461 U.S. at 434 n.9, 103 S. Ct. at 1940 n.9 (same).

Redistricting Panels have not granted upward adjustments. We conclude that there is no basis for doing so in this case.

Plaintiffs–intervenors Britton et al. sued in federal court in January 2011. They are seeking fees for a significant amount of time spent on the federal litigation, between December 2010 and May 2011. They also seek fees for additional time that was devoted to the federal litigation in June and July 2011. Not any of the time addressing the litigation in federal court is reasonably related to the proceedings before the panel, nor is time spent on legislative redistricting activities. Also, because efforts to oppose a motion to lift the stay of proceedings in state court were unsuccessful, amounts sought for these efforts are not properly included as compensable fees and costs of a prevailing party.

The costs sought include filing and service fees in federal court and copies that clearly relate to the federal court action. Other amounts sought for "copying" and "photocopies" are not adequately explained, and some of those amounts predate the intervention of these parties. Other expenses, including those attributable to transcripts, printing of maps, CDs, and binding of submissions to the panel, are reasonable and clearly related to the proceedings before us.

V. *Conclusion*

We have no doubt that all of the attorneys who appeared before us conscientiously considered and decided how best to represent their clients during the redistricting proceedings. In determining the amount of reasonable fees and costs to be awarded, we are mindful that the benefits of redistricting inure to all Minnesota citizens and voters. After careful consideration of the results obtained, the supporting documentation, and the

contributions made by all parties to the work of the panel, we conclude that $115,000 constitutes reasonable attorney fees and costs to be awarded to each group of applicants.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. Plaintiffs Sara Hippert et al. are awarded $115,000 for attorney fees and costs incurred.

2. Plaintiffs–intervenors Kenneth Martin et al. are awarded $115,000 for attorney fees and costs incurred.

3. Plaintiffs–intervenors Audrey Britton et al. are awarded $115,000 for attorney fees and costs incurred.

Dated: August 16, 2012

BY THE PANEL:

Wilhelmina M. Wright
Presiding Judge

Ivy S. Bernhardson

James B. Florey

Edward I. Lynch

John R. Rodenberg